

# 9-100.000

## THE CONTROLLED SUBSTANCES ACT

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### **9-100.001 The Controlled Substances Act -- Generally**

This chapter contains Department of Justice policy that applies to the investigation and prosecution of offenses involving violations of the Controlled Substances Act, which is found in Title 21, United States Code. Specific questions regarding controlled substances offenses may be addressed to the Narcotic and Dangerous Drug Section, Criminal Division.

### **9-100.010 Scheduling of Controlled Substances -- 21 U.S.C. §§ 812; 813; 802(32)**

The Controlled Substances Act establishes penalties and controls for each schedule. It also contains a now out-dated list of controlled substances and listed chemicals. For the current schedules, see 21 C.F.R. Part 1308 (for controlled substances), 21 C.F.R. Part 1300.01 (anabolic steroids) and 21 C.F.R. Part 1310 (listed chemicals). *See* the Criminal Resource Manual at 1868.

### **9-100.020 Attempt and Conspiracy -- 21 U.S.C. §§ 846; 963**

Section 846 of Title 21 prohibits conspiracies and attempts to violate any substantive offense established by Subchapter *I* of Title 21 ("Control and Enforcement") -- in other words, Section 846 makes it a crime to conspire to violate or attempt to violate any substantive offense set forth in 21 U.S.C. §§ 801-904. Analogously, Section 963 of Title 21 prohibits conspiracies and attempts to violate any substantive offense established by Subchapter *II* of Title 21 ("Import and Export") -- in other words, Section 963 makes it a crime to conspire to violate or attempt to violate any substantive offense set forth in 21 U.S.C. §§ 951-971.

The general conspiracy statute (18 U.S.C. § 371) may not be used to charge a conspiracy involving those sections. *See* Principles of Federal Prosecution, USAM 9-27.300 ("Except as hereafter provided, once the decision to prosecute has been made, the attorney for the government should charge, or should recommend that the grand jury charge, the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction").

### **9-100.030 Death Penalty for Controlled Substances Offenses**

The death penalty shall not be sought without prior written authorization of the Attorney General. See the USAM at 9-10.000, for Department guidelines regarding the death penalty.

## **9-100.040 Forfeitures -- 21 U.S.C. § 853**

Title 21 U.S.C. § 853 provides for the forfeiture of property, profits, and other rights obtained through or used in the commission of felony drug offenses. Prosecutors are encouraged to include forfeiture offenses in all drug indictments. Contact the Asset Forfeiture and Money Laundering Section for further information.

## **9-100.100 Controlled Substance Destruction Procedures**

This section sets forth the responsibilities of United States Attorneys' Offices (USAO) with respect to drug evidence destruction.

Each USAO should designate a Drug Evidence Destruction Coordinator (DEDC). This coordinator should preferably be an attorney familiar with the prosecution of narcotics cases and related evidentiary issues. The coordinator will work closely with Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI) and United States Customs Service (USCS) counterparts to ensure that the evidentiary value of the drug evidence is preserved for later use in court. In addition, the coordinator will be responsible for monitoring legal problems, providing advice, and ensuring that the FBI, DEA and USCS 60-day notices are forwarded to the appropriate attorney.

When the USAOs receive the 60-day notice, it should be forwarded to the attorney assigned to the case (and to the DEDC) to determine the appropriate response. The prosecutor may want to contact the DEA, FBI or USCS agent in charge of the case to get the agent's assurance that sufficient photographic documentation of the evidence is or will be available prior to destruction. Furthermore, if the evidence is marijuana, the prosecutor is encouraged to consult with the case agent to make sure that the evidence was accurately weighed and the weighing method was adequately documented for use in court proceedings. Once the appropriate reviews and consultations are complete, the prosecutor may take one of the following actions:

1. Send a written response to the case agent before the 60-day time period elapses permitting sampling and destruction to proceed. (NOTE: The Department encourages prosecutors to do this as soon as possible for cases where there is no basis for an exception request. This will permit DEA, FBI or USCS to begin the sampling and destruction process in less than 60 days, providing laboratory analyses are completed.); or
2. Permit the 60-day time period to elapse, at which point the DEA, FBI or USCS case agent will authorize sampling and destruction with no further notice to the USAOs once laboratory analyses are completed; or
3. Determine that an exception request is warranted, and forward such a written request, signed personally by the USA, to the DEA, FBI or USCS Special Agent-In-Charge (SAC). It must be received before the expiration date of the 60-day time period.

NOTE: The use of exception requests should be severely limited. In any case in which the USA requests an exception from the SAC, the burden will be on the prosecutor to show the particular circumstances or factors that would adversely affect the government's case. Since the sample retained under the standard procedure will be large -- twice the amount required for maximum mandatory minimum penalties for all substances other than marijuana --prosecutors are strongly discouraged from filing an exception request on the grounds that the full seizure is needed for jury appeal or other purely strategic purposes.

If the SAC denies the exception request, the USA will be so notified in writing. The USA may then choose to abide by the SAC's decision or may appeal the decision to the Assistant Attorney General (AAG), Criminal Division, as discussed below. In the event that the DEA, FBI or USCS SAC denies the USA's request to preserve the evidence, the exhibit will be retained for 30 days from the day of the denial notice before sampling and destruction are authorized. If an appeal is made, the evidence will be maintained intact until the appeal is decided,

provided that the DEA, FBI or USCS SAC is notified of the appeal within 30 days of the denial notice. It shall be the USA's responsibility to provide the DEA, FBI or USCS SAC with a copy of the appeal letter.

If the DEA, FBI or USCS SAC denies the exception request, the USA may either let the decision stand or may choose to appeal the decision to the AAG, Criminal Division. Should the USA choose to appeal, a letter documenting the reasons for the appeal should be sent to the Chief of the Narcotic and Dangerous Drug Section, Criminal Division.

A copy of the appeal request should be sent to the SAC and must be received before the 30-day appeal period has elapsed.

### **9-100.200 Procedures Relating to Expungement of Criminal Records Pursuant to 18 U.S.C. § 3607**

For procedures relating to the expungement of criminal records pursuant to 18 U.S.C. § 3607, see the Criminal Resource Manual at 1869.

### **9-100.500 Narcotic Addict Rehabilitation Act of 1966**

The (Pub.L. No. 89-793) recognizes the fact that narcotic addicts, including those who violate Federal criminal laws, are medical problems and should receive treatment rather than mere punishment. The Narcotic Addict Rehabilitation Act established several different but related types of commitment procedures, all of which contain both institutional and aftercare provisions. Although this act remains in effect, due to lack of appropriation and other reasons it is not utilized to the extent to which it was in the years immediately following its enactment. Other programs are also available to addicted defendants who are sentenced under regular sentencing provisions. See the Criminal Resource Manual at 1870, for further discussion of this Act.